

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANK CRAIG, trading as FRANK CRAIG AUTO BODY	: CIVIL ACTION
	:
	:
v.	:
	:
JACK SALAMONE, MAYOR OF BOROUGH OF NORRISTOWN	: NO. 98-3685

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

August 11, 1999

Plaintiff Frank Craig ("Craig") filed an action against the defendant, Jack Salamone ("Salamone"), Mayor of the Borough of Norristown ("the Borough"), for allegedly breaching a 1994 exclusive towing contract, entered into by Craig and Salamone's predecessor. Craig initially filed his action only against Salamone<sup>1</sup> in 1994 in the Delaware County Court of Common Pleas, amended the complaint later that year, and then, on January 12, 1998, filed a separate complaint against the Borough. Craig's motion to consolidate the newly asserted claim against the Borough with the existing claim against Salamone was granted on April 16, 1998. On June 19, 1998, Craig was granted leave to file a second amended complaint in the consolidated action, in which he added a claim under 42 U.S.C. § 1983 and added the

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<sup>1</sup>The initial complaint also named Salamone's attorney, Paul Vangrossi, as a defendant but he was subsequently dismissed.

Borough as a defendant.<sup>2</sup> Salamone removed the amended action to this court and subsequently filed a motion to dismiss. During oral argument on the motion to dismiss, the court questioned the timeliness of removal and the possibility of remand. The removal was untimely but, absent a timely motion to remand, no remand was possible.

The court granted the motion to dismiss in part and denied it in part. Regarding defendant Salamone, the court denied the motion to dismiss the § 1983 claim as well as the pendent state law claims of breach of contract and tortious interference with prospective contractual relations but dismissed the intentional infliction of emotional distress claim. Regarding the Borough defendant, the court granted the motion to dismiss the § 1983 claim against the Borough because it was barred by the statute of limitations and did not relate back to the original claims filed against Salamone in his individual capacity. The underlying federal claim against the Borough having been dismissed, the Court declined to exercise pendent jurisdiction over the remaining state law claims against the Borough.

Craig filed a timely motion for reconsideration of the court's decision to dismiss the pendent state law claims against

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<sup>2</sup>Craig had already filed a separate action against the Borough, but stated that his motion to amend the consolidated action to add the Borough as a defendant was done "out of an abundance of caution." (Pl.'s Br. Supp. Mot. to Consolidate at 3).

the Borough. For the reasons that follow, the court will grant the motion for reconsideration and retain supplemental jurisdiction over the state law claims against the Borough under 28 U.S.C. § 1367(a).

### **BACKGROUND**

Craig does business as Frank Craig Auto Body, with his principal place of business in Norristown, Pennsylvania. (Second Am. Compl. ¶ 1). In December, 1993, the Borough solicited bids for a two-year exclusive towing contract. (Id. ¶ 3). On review of the bids submitted Craig was found the only qualified, responsible bidder. (Id. ¶ 5). He was awarded the contract on January 1, 1994; (id. ¶ 6) the contract was executed that day. (Id. ¶ 7). Salamone was sworn in as the new mayor of the Borough on January 3, 1994 and repudiated the towing contract approximately ten days later. (Id. ¶¶ 9-10). Salamone thereafter entered into a new towing contract with a political supporter. (Id. ¶ 13).

### **DISCUSSION**

#### **I. Standard**

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir.

1985), cert. denied, 476 U.S. 1171 (1986). "Because federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly." Continental Casualty Co. v. Diversified Indus., Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995).

Courts will reconsider an issue only "when there has been an intervening change in the controlling law, when new evidence has become available, or when there is a need to correct a clear error or prevent manifest injustice." NL Industries, Inc. v. Commercial Union Ins. Co., 65 F.3d 314, 324 n.8 (3d Cir. 1995); Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994). "A motion for reconsideration is ... not properly grounded on a request that a court rethink a decision it has already made." Tobin v. General Elec. Co., 1998 WL 31875, at \*1 (E.D. Pa. Jan. 27, 1998). Before the court is Craig's motion to reconsider this court's decision to dismiss the state law claims against the Borough as lacking an independent basis for jurisdiction.

## **II. Pendent Jurisdiction**

This court's federal question jurisdiction may be invoked under 28 U.S.C. § 1331 by Craig's claim against Salamone under 42 U.S.C. § 1983.<sup>3</sup> When a court exercises federal question

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<sup>3</sup>42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or

jurisdiction it may in its discretion elect to exercise supplemental jurisdiction over any pendent state law claims. See 28 U.S.C. § 1367. Section 1367(a) provides that, in a civil action over which the district courts have original federal question jurisdiction, "the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the Constitution."

Section 1367 makes clear that "[s]uch supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties." Id. This clarification, added as an amendment to the statute in 1988, restored what is commonly referred to as "pendent party jurisdiction."

Traditionally, pendent jurisdiction included state law claims pendent to a particular party's federal claim. But many courts extended pendent jurisdiction to encompass state law claims that formed a "common nucleus of operative fact" with the federal claim, even if brought against another party in the action. See 13B Charles Alan Wright & Arthur R. Miller, Federal Practice and

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causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

Procedure § 3567.2 (1984 & Supp. 1998). The Supreme Court effectively sounded the death knell of pendent party jurisdiction in Finley v. United States, 490 U.S. 545 (1989) until it was revived by Congress with its amendment of 28 U.S.C. § 1367. See id.; see also Brown v. Grabowski, 922 F.2d 1097, 1121 n.17 (3d Cir. 1990)(recognizing this abrogation), cert. denied, 501 U.S. 1218 (1991).

After the amendment of section 1367, a court considering whether to exercise pendent party jurisdiction should focus its inquiry on whether the pendent party's claims "are so related to claims in the action within [the] original jurisdiction that they form part of the same case or controversy." 28 U.S.C. § 1367(a). This standard asks both whether the pendent claims arise from a "common nucleus of operative fact" and whether the claims are such that a plaintiff "would ordinarily be expected to try them in one judicial proceeding." United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966). In both a separate complaint and in his Second Amended Complaint, Craig added the Borough as a defendant. In considering the defendants' motion to dismiss, the court noted that "the claims asserted against the Borough are not clear," but in his motion for reconsideration, Craig argues he plead viable claims for breach of contract and tortious interference with prospective contractual relations. These claims are identical to those asserted against Salamone and arise from the same conduct;

they "form part of the same case or controversy." See Arnold v. Kimberly Quality Care Nursing Serv., 762 F. Supp. 1182, 1886 (M.D. Pa. 1991)(husband's loss of consortium claim formed part of the same case or controversy as plaintiff wife's Title VII claim).

Now that the state law claims against the Borough have been clarified, the court finds no compelling reason to decline to exercise supplemental jurisdiction over the state law claims against the Borough; they involve standard state law issues and do not clearly predominate over the remaining § 1983 claim against Salamone. 28 U.S.C. § 1367(c). It is in the interest of justice and judicial economy to consider the viable claims against Salamone and the Borough in one proceeding. See DiIenno v. Goodwill Indus. of Mid-Eastern Pennsylvania, 1997 WL 152799, \*2 (E.D. Pa. March 27, 1997)(exercising supplemental jurisdiction over state law claims against one defendant that were "inextricably linked" to the federal claim against another defendant).

In its response in opposition to Craig's motion for reconsideration, the Borough argues this court must decline to exercise supplemental jurisdiction unless interests of judicial economy, convenience, and fairness to the parties provide an affirmative justification to the contrary. (Defs.' Mem. Opp'n Mot. Reconsideration at 4). But the cases cited by the Borough

are inapposite because they involve supplemental jurisdiction of pendent state law claims after all federal claims have been dismissed. One of the cases relied on by the Borough, Borough of West Mifflin v. Lancaster, 45 F.3d 780, 788 (3d Cir. 1995), makes clear that where an original federal claim is going forward, the court should expect to exercise supplemental jurisdiction over claims based on a common nucleus of operative fact "unless the district court can point to some substantial countervailing considerations." The court finds no countervailing considerations.

The court, having reconsidered its prior decision to exercise supplemental jurisdiction over the state claims against the Borough, must now determine whether the claims are barred by the applicable statute of limitations. Under Pennsylvania law, the statute of limitations for a breach of contract claim is four years. See 42 Pa. Cons. Stat. Ann. § 5525(8). According to the first complaint filed against the Borough, Craig's contract with the Borough was breached "after" Salamone assumed office on January 3, 1994.<sup>4</sup> (1998 Compl. ¶ 8). Craig filed his first

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<sup>4</sup>Craig's second amended complaint, which included claims against the Borough, further specified that Salamone breached the contract "approximately ten days" after assuming office on January 3, 1994. (Second Am. Compl. ¶ 10). But because the initial complaint against the Borough included the only claims filed against the Borough within the statute of limitations, the court looks to the facts as alleged in that complaint. If that first complaint was filed more than four years after Salamone's repudiation of the contract, Craig's breach of contract claim



complaint against the Borough on January 12, 1998. Under the facts alleged in the first complaint filed against the Borough, the court can not dismiss the breach of contract claim as barred by the statute of limitations. The Pennsylvania statute of limitations for a tortious interference with prospective contractual relations claim is two years. See 42 Pa. Cons. Stat. Ann. § 5524(3). The limitations period for a tortious interference claim runs from the accrual of the injury. See Bednar v. Marino, 646 A.2d 573, 577 (Pa. Super. 1994). Craig's complaint does not specify the date or dates of the Borough's alleged interference; he refers only to the Borough and Salamone "embarking on a campaign of harassment and official intimidation . . . [with the] intention to restrict and ruin the Plaintiff's ability to operate and maintain a viable towing business in the Borough of Norristown." (Id. ¶¶ 31-33). Without more specific allegations, the court can not dismiss Craig's tortious interference claim as barred by the statute of limitations.<sup>5</sup>

### CONCLUSION

Craig filed three complaints against Salamone, one of which sought to add the Borough as a defendant, and one separate

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against the Borough would be barred by § 5525(8).

<sup>5</sup>This decision is without prejudice to a subsequent motion for summary judgment should further discovery reveal that all of the alleged interferences with Craig's prospective contracts occurred more than two years before January 12, 1998, the date the first complaint against the Borough was filed.

complaint against the Borough. All the claims asserted against Salamone and the Borough arise from the same alleged breach of Craig's exclusive towing contract with the Borough. When Craig's claims against the Borough were not clear, the court declined to exercise supplemental jurisdiction over the claims after it dismissed the sole federal claim against the Borough on statute of limitations grounds. On reconsideration, and with the benefit of Craig's clarification of the claims brought against the Borough, the court concludes that the state law claims against the Borough arise from the same common nucleus of operative facts as that underlying the claims against Salamone and involve the same, straightforward state law issues. For these reasons, the court will exercise supplemental jurisdiction over Craig's claims for breach of contract and tortious interference with prospective contractual relations against the Borough. Because the allegations in the complaint filed against the Borough on January 12, 1998 do not specify exact dates, the court is unable to determine whether the claims against the Borough are barred by the applicable statutes of limitations.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANK CRAIG, trading as FRANK	:	CIVIL ACTION
CRAIG AUTO BODY	:	
	:	
v.	:	
	:	
JACK SALAMONE, MAYOR OF BOROUGH	:	
OF NORRISTOWN	:	NO. 98-3685

ORDER

AND NOW this 11th day of August, 1999, upon consideration of Plaintiff's Motion for Reconsideration, Defendants' response in opposition, and in accordance with the attached Memorandum, it is **ORDERED** that plaintiff's Motion for Reconsideration is **GRANTED**. The court's Memorandum and Order of April 8, 1999 is **AMENDED** with regard to the state law claims of breach of contract and tortious interference with prospective contractual relations; the court will retain supplemental jurisdiction over these claims against the Borough only. All other provisions of the Court's Memorandum and Order on April 8, 1999 remain in effect.

It is **FURTHER ORDERED** that Salamone and the Borough shall file an answer to the remaining claims against them on or before August 31, 1999.

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Norma L. Shapiro, S.J.